
HOUSE BILL No. 1198

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-43-5-5.

Synopsis: Check deception. Increases the penalty for check deception from a Class A misdemeanor to a Class D felony if the check, draft, or order is issued on a closed account.

Effective: July 1, 2001.

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January 9, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1198

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-43-5-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) A person who
3 knowingly or intentionally issues or delivers a check, a draft, or an
4 order on a credit institution for the payment of or to acquire money or
5 other property, knowing that it will not be paid or honored by the credit
6 institution upon presentment in the usual course of business, commits
7 check deception, a Class A misdemeanor. However, the offense is a
8 Class D felony if:

9 (1) the amount of the check, draft, or order is at least two
10 thousand five hundred dollars (\$2,500) and the property acquired
11 by the person was a motor vehicle; **or**

12 **(2) the check, draft, or order is issued on a closed account.**

13 (b) An unpaid and dishonored check, a draft, or an order that has the
14 drawee's refusal to pay and reason printed, stamped, or written on or
15 attached to it constitutes prima facie evidence:

16 (1) that due presentment of it was made to the drawee for payment
17 and dishonor thereof; and



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1 (2) that it properly was dishonored for the reason stated.

2 (c) The fact that a person issued or delivered a check, a draft, or an
3 order, payment of which was refused by the drawee, constitutes prima
4 facie evidence that the person knew that it would not be paid or
5 honored. In addition, evidence that a person had insufficient funds in
6 or no account with a drawee credit institution constitutes prima facie
7 evidence that the person knew that the check, draft, or order would not
8 be paid or honored.

9 (d) The following two (2) items constitute prima facie evidence of
10 the identity of the maker of a check, draft, or order if at the time of its
11 acceptance they are obtained and recorded, either on the check, draft,
12 or order itself or on file, by the payee:

13 (1) Name and residence, business, or mailing address of the
14 maker.

15 (2) Motor vehicle operator's license number, Social Security
16 number, home telephone number, or place of employment of the
17 maker.

18 (e) It is a defense under subsection (a) if a person who:

19 (1) has an account with a credit institution but does not have
20 sufficient funds in that account; and

21 (2) issues or delivers a check, a draft, or an order for payment on
22 that credit institution;

23 pays the payee or holder the amount due, together with protest fees and
24 any service fee or charge, which may not exceed the greater of twenty
25 dollars (\$20) or five percent (5%) (but not more than two hundred fifty
26 dollars (\$250)) of the amount due, that may be charged by the payee or
27 holder, within ten (10) days after the date of mailing by the payee or
28 holder of notice to the person that the check, draft, or order has not
29 been paid by the credit institution. Notice sent in the manner set forth
30 in IC 26-2-7-3 constitutes notice to the person that the check, draft, or
31 order has not been paid by the credit institution. The payee or holder of
32 a check, draft, or order that has been dishonored incurs no civil or
33 criminal liability for sending notice under this subsection.

34 (f) A person does not commit a crime under subsection (a) when:

35 (1) the payee or holder knows that the person has insufficient
36 funds to ensure payment or that the check, draft, or order is
37 postdated; or

38 (2) insufficiency of funds or credit results from an adjustment to
39 the person's account by the credit institution without notice to the
40 person.

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